

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CIVIL NO. 1:09CV177  
(1:07CR2)

JOSHUA D. GALVIN,	)	
	)	
Petitioner,	)	
	)	
Vs.	)	<u>ORDER OF DISMISSAL</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

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THIS MATTER is before the Court on the Petitioner's motion to address restitution, received by the Court April 20, 2009, and filed herein on May 12, 2009.

The Petitioner and his co-Defendants were each ordered to pay, jointly and severally, restitution to Bank of America in the amount of \$1,295.00; each Defendant was also ordered to pay a \$200 statutory assessment. Petitioner argues that his "share" of the restitution balance is \$431.67, and, considering he has paid his assessment, he alleges he has now paid "most of his 1/3 share of the ordered restitution[.]" **Petitioner's Motion, at 2.** He asks that the Court order the Bureau of Prisons (BOP) to

“cease and desist” from making further deductions from his prison earnings unless BOP can “demonstrate” his co-Defendants are in default of their restitution obligations. *Id.* In addition, Petitioner requests the Court defer further payments to the restitution balance until 60 days after his release from prison. *Id.*

This Circuit requires that the Petitioner’s motion be construed as a habeas corpus petition pursuant to 28 U.S.C. § 2241. **See *Gripper v. United States*, 2007 WL 1115953 (4<sup>th</sup> Cir. 2007); *Hudson v. United States*, 2007 WL 901591 (4<sup>th</sup> Cir. 2007).** The Court is required to make a determination whether to transfer this action to the district court of Petitioner’s confinement or dismiss the action without prejudice to refile in the appropriate district court. ***Gripper, supra; Hudson, supra.***

After review of the Petitioner’s motion, the Court finds that the interests of justice would best be served by dismissing this action without prejudice and permitting the Petitioner to refile same in the appropriate district court.

**IT IS, THEREFORE, ORDERED** that the action is hereby  
**DISMISSED WITHOUT PREJUDICE.**

Signed: May 14, 2009



Lacy H. Thornburg  
United States District Judge

